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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

THE PEOPLE, Plaintiff and Respondent, v. COREY DONTE GALE, Defendant and Appellant.	C045031 (Super. Ct. No. CR03-0595)
THE PEOPLE, Plaintiff and Respondent, v. COREY DONTE GALE, Defendant and Appellant.	C045561 (Super. Ct. No. CR02-2704)

On September 23, 2002, in case No. CR02-2704, defendant Corey Donte Gale pleaded no contest to second degree robbery.

(Pen. Code, §§ 211, 212.5, subd. (c).)[1] In November 2002, the trial court imposed a three-year sentence, but suspended execution of the sentence and defendant was granted probation.

Approximately nine months later, in a court trial, defendant was convicted in case No. CR03-0595 of transportation of cocaine base and possession of cocaine base. (Health & Saf. Code, §§ 11352, subd. (a), 11350, subd. (a).)[2] The robbery conviction was alleged as a strike prior allegation and defendant admitted it.[3] Defendant's probation in case No. CR02-2704 was revoked.

Defendant was sentenced to nine years in state prison, comprised of eight years for the transportation of cocaine base, plus a consecutive one-third the midterm, or one year, for the second degree robbery. The trial court also sentenced defendant to two years for the possession of cocaine base, which was stayed pursuant to section 654. The court limited defendant's presentence conduct credits in both cases to 15 percent.

On appeal, defendant contends that the trial court erred (1) by failing to properly advise him of his constitutional

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[1] Further undesignated section references are to the Penal Code.

[2] The court acquitted defendant of a third charge--unlawful possession of ammunition. (§ 12316, subd. (b)(1).)

[3] The information charged the strike prior allegation as an "enhancement" under section 667, subdivisions (c) and (e)(1), and the parties, as well as the court, continued to refer to the prior strike as an enhancement. The Three Strikes law does not constitute an enhancement; rather it is an alternative sentencing scheme. (*People v. Cressy* (1996) 47 Cal.App.4th 981, 991; *People v. Sipe* (1995) 36 Cal.App.4th 468, 485-486.)

rights and to obtain waivers before accepting his admission of the strike prior allegation; and (2) by limiting his presentence conduct credit to 15 percent in each case. We shall affirm the judgment.

DISCUSSION

I

Defendant's contention that the trial court failed to advise him properly of his constitutional rights arises as follows:

On August 5, 2003, case No. CR03-0595 was called for trial. Defense counsel informed the court that defendant wanted to waive his right to a jury trial and have the charges tried to the court. The court advised defendant of the three charges against him and that his prior robbery conviction of September 23, 2002, was "alleged as an enhancement to double your sentence should you be convicted of any of these three felonies."

The court further informed defendant that he was "entitled to a jury trial as to whether or not you're guilty or not guilty of these three charges as well as the enhancement. At that trial you're entitled to confront, cross-examine any witnesses that would testify against you. You're also entitled to present any evidence you wish a jury to consider regarding whether or not you're guilty or not guilty of these offenses." The court then accepted defendant's waiver, joined by his counsel, of his right to a jury trial.

A court trial commenced August 6 and concluded August 13. During defense counsel's opening statement, he informed the court that defendant would not be "disputing that felony strike conviction" allegation. During defendant's testimony, he expressly acknowledged having been convicted of the strike prior.

After finding defendant guilty of the drug charges, the following dialogue occurred: "The Court: . . . Is there evidence presented as to the enhancement? Or this was a Court trial as to the enhancement? [Prosecutor]: I believe that was stipulated to by the parties. [Defense counsel]: We're talking about his past criminal record that we've actually stipulated to." The court then asked defendant if he was admitting or denying the strike prior allegation. Defendant replied, "I admit."

Defendant argues that because "[t]he record is silent as to [his] knowledge and waiver of his right to confrontation and his privilege against self-incrimination," as to the strike prior allegation, his admission of that conviction was not knowing and voluntary, and, therefore, the admission must be reversed. Reversal is not required.

In *In re Yurko*, the California Supreme Court adopted, as a judicial rule of criminal procedure, the requirement that before the trial court accepts a defendant's admission of a prior felony conviction, the defendant must be advised of the

three *Boykin-Tahl*[4] admonitions, namely, the privilege against self-incrimination, the right to a jury trial, and the right of confrontation. (*In re Yurko* (1974) 10 Cal.3d 857, 863 & fn. 5.)

"[I]f the transcript does not reveal complete advisements and waivers [of the *Boykin-Tahl* rights], the reviewing court must examine the record of 'the entire proceeding' to assess whether the defendant's admission of the prior conviction was intelligent and voluntary in light of the totality of circumstances." (*People v. Mosby* (2004) 33 Cal.4th 353, 361.)

Here, prior to accepting defendant's waiver of his right to jury trial, the court advised defendant that he was "entitled to a jury trial" on the substantive charges "as well as the enhancement," that at trial he would be entitled to confront and cross-examine witnesses against him, and to present evidence in his favor. Thus, at the time defendant admitted the strike prior allegation, he was clearly aware of two of the three *Boykin-Tahl* rights with respect to that allegation.

Although defendant was not advised of his privilege against self-incrimination, such knowledge may be inferred from the fact that defendant was told of his right to a trial on the strike prior allegation and was given a choice to "admit" or "deny" the allegation. Consequently, under the totality of the circumstances, it must be concluded that defendant's admission was knowing and voluntary.

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[4] *Boykin v. Alabama* (1969) 395 U.S. 238 [23 L.Ed.2d 274]; *In re Tahl* (1969) 1 Cal.3d 122.

II

Defendant claims that the trial court erred by limiting his presentence conduct credits in case No. CR03-0595 to 15 percent because neither of his current crimes was a violent felony. He contends that the 15-percent limitation applies only to the robbery conviction in case No. CR02-2704, notwithstanding the fact that the two cases were sentenced consecutively. We note that this issue and related issues are pending before the California Supreme Court.[5]

As we shall explain, we believe that section 2933.1, subdivision (c), limits presentence conduct credits for nonviolent crimes whenever the defendant has also suffered a conviction for a violent felony and the sentences for the crimes are imposed consecutive to one another.

The language of section 2933.1, subdivision (c) evidences an intent to limit the presentence credits that can be received by "specified felons."[6] (*People v. Cooper* (2002) 27 Cal.4th 38,

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[5] *People v. Marichalar* (2003) 109 Cal.App.4th 1513, review granted September 17, 2003, S117796; *People v. Baker* (2002) 104 Cal.App.4th 774, review granted February 25, 2003, S112982; *In re Reeves* (2002) 102 Cal.App.4th 232, review granted December 18, 2002, S110887; and *In re Black* (2002) 101 Cal.App.4th 1026, review granted December 18, 2002, S110683.

[6] Section 2933.1 provides in relevant part: "(a) Notwithstanding any other law, any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5 shall accrue no more than 15 percent of work time credit, as defined in Section 2933. [¶] . . . [¶] (c) Notwithstanding Section 4019 or any other provision of law, the maximum credit that may be earned against a period of confinement in, or commitment to, a county jail, industrial farm, or road camp,

43; *People v. Buckhalter* (2001) 26 Cal.4th 20, 37, fn. 7; *People v. Aguirre* (1997) 56 Cal.App.4th 1135, 1138-1141.) As the court noted in *People v. Ramos* (1996) 50 Cal.App.4th 810, 817 (*Ramos*), section 2933.1 applies "to the offender not to the offense." In *Ramos*, the defendant was convicted of numerous offenses including robbery, which is a violent offense under section 667.5, and possession of a controlled substance, which is not. He was sentenced to 22 years in prison, including a consecutive eight-month term for the drug offense. The trial court applied the 15-percent limitation to the entire 22-year sentence. (*Ramos, supra,* at pp. 814-817.) The Court of Appeal rejected the defendant's contention that his credits for the consecutive sentence on the drug possession count should be calculated under section 4019, not section 2933.1, because drug possession was not a violent felony under section 667.5. (*Ramos, supra,* at p. 817.) Focusing on the language of section 2933.1, subdivision (c), the court concluded that section 2933.1 applies "'[n]otwithstanding Section 4019 or any other provision of the law'" and "limits to 15 percent the maximum number of conduct credits available to 'any person who is convicted of a felony offense listed in Section 667.5.' That is, by its terms, section 2933.1 applies to the offender not to the offense and so limits a violent felon's conduct credits irrespective of whether

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or a city jail, industrial farm, or road camp, following arrest and prior to placement in the custody of the Director of Corrections, shall not exceed 15 percent of the actual period of confinement for any person specified in subdivision (a)."

or not all his or her offenses come within section 667.5." (*Ibid.*) *Ramos* noted that the Legislature could have limited the 15 percent rule to a defendant's violent felonies if that had been its intention. (*Ibid.*) We agree with both the reasoning and the conclusion of *Ramos*.

This case does not compel a result different than *Ramos* simply because defendant was convicted of his violent and nonviolent felonies in different proceedings. Under the determinate sentencing law, the rules governing the imposition of a consecutive sentence explicitly reject such a distinction. "[W]hen a defendant is sentenced consecutively for multiple convictions, whether in the same proceeding or in different proceedings, the judgment or aggregate determinate term is to be viewed as interlocking pieces consisting of a principal term and one or more subordinate terms. (§ 1170.1, subd. (a).)" (*People v. Begnaud* (1991) 235 Cal.App.3d 1548, 1552.) Moreover, California Rules of Court, rule 4.452 states: "If a determinate sentence is imposed pursuant to section 1170.1(a) consecutive to one or more determinate sentences imposed previously . . . : [¶] (1) The sentences on all determinately sentenced counts . . . shall be combined *as though they were all counts in the current case*." (Italics added.)

Accordingly, even though application of section 2933.1 is limited to defendants whose "current offenses, in and of themselves," are violent felonies (*People v. Thomas* (1999) 21 Cal.4th 1122, 1129), that section's restriction on the availability of conduct credits applies to all of defendant's

convictions now before us, the nonviolent felonies and the violent one (*Ramos*, *supra*, 50 Cal.App.4th at p. 817).

DISPOSITION

The judgment is affirmed.

DAVIS, J.

We concur:

SIMS, Acting P.J.

RAYE, J.